

TITLE 52 INDIANA BOARD OF TAX REVIEW

Proposed Rule LSA Document #03-179

DIGEST

Adds 52 IAC 2 and 52 IAC 3 to establish standards to govern proceedings before the Indiana board of tax review. Effective 30 days after filing with the secretary of state.

52 IAC 2 **52 IAC 3**

SECTION 1. 52 IAC 2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 2. PROCEDURAL RULES

Rule 1. Purpose and Applicability

52 IAC 2-1-1 Purpose

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. The purpose of this article is to establish procedures to govern administrative proceedings before the board. The definitive procedures, procedural requirements, and evidentiary controls established by this article are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible. *(Indiana Board of Tax Review; 52 IAC 2-1-1)*

52 IAC 2-1-2 Applicability

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. Except as provided in 52 IAC 3 regarding the small claims procedures, the provisions of this article apply to and govern all proceedings before the board. *(Indiana Board of Tax Review; 52 IAC 2-1-2)*

52 IAC 2-1-3 Jurisdiction of the board

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.5-4-1; IC 6-1.5-5-1

Sec. 3. The board shall conduct an impartial review of an appeal from:

- (1) a determination by an assessing official or a county property tax assessment board of appeals described under IC 6-1.5-4-1;
- (2) a final determination of the department described under IC 6-1.5-5-1; or
- (3) any other determination or finding by the department, a PTABOA, or an assessing official for which review by the board is expressly authorized under Indiana law.

(Indiana Board of Tax Review; 52 IAC 2-1-3)

Rule 2. Definitions

52 IAC 2-2-1 Applicability

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Board of Tax Review; 52 IAC 2-2-1)*

52 IAC 2-2-2 “Administrative law judge” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-3-3

Sec. 2. “Administrative law judge” refers to an individual appointed under IC 6-1.5-3-3 to conduct a hearing that the board is required by law to hold. *(Indiana Board of Tax Review; 52 IAC 2-2-2)*

52 IAC 2-2-3 “Appeal petition” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-3

Sec. 3. “Appeal petition” means a petition for review filed with the board under IC 6-1.1-15-3. *(Indiana Board of Tax Review; 52 IAC 2-2-3)*

52 IAC 2-2-4 “Authorized representative” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. “Authorized representative” means a person, including, but not limited to, a tax representative as defined in 52 IAC 1-1-6, authorized to represent a party in a matter governed by this article. *(Indiana Board of Tax Review; 52 IAC 2-2-4)*

52 IAC 2-2-5 “Board” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-1-3

Sec. 5. “Board” means the Indiana board of tax review established under IC 6-1.5-1-3. *(Indiana Board of Tax Review; 52 IAC 2-2-5)*

52 IAC 2-2-6 “Board member” or “member of the board” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-2-1

Sec. 6. “Board member” or “member of the board” means one (1) of the three (3) members of the board appointed under IC 6-1.5-2-1. *(Indiana Board of Tax Review; 52 IAC 2-2-6)*

52 IAC 2-2-7 “Central office” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. “Central office” means the principal office of the board located in Indianapolis, Indiana. *(Indiana Board of Tax Review; 52 IAC 2-2-7)*

52 IAC 2-2-8 “Department” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.1-30-1.1

Sec. 8. “Department” means the department of local government finance established under IC 6-1.1-30-1.1. *(Indiana Board of Tax Review; 52 IAC 2-2-8)*

52 IAC 2-2-9 “Final order or final determination” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 9. “Final order or final determination” means any action of the board that is:

- (1) designated as final by the board;**
- (2) the final step in the administrative process before resort may be made to the judiciary; or**
- (3) deemed final under IC 6-1.1-15-4 and IC 6-1.1-15-5.**

(Indiana Board of Tax Review; 52 IAC 2-2-9)

52 IAC 2-2-10 “Nonfinal order” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 10. “Nonfinal order” means any action by the board that is not a final order or final determination subject to direct judicial review. *(Indiana Board of Tax Review; 52 IAC 2-2-10)*

52 IAC 2-2-11 “Order or ruling” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 11. “Order or ruling” means any final or nonfinal order, ruling, or determination by the board. *(Indiana Board of Tax Review; 52 IAC 2-2-11)*

52 IAC 2-2-12 “Original determination” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 12. “Original determination” means a determination of assessed value, qualification for an exemption, credit, or deduction, or other decision that is the subject of the appeal petition. *(Indiana Board of Tax Review; 52 IAC 2-2-12)*

52 IAC 2-2-13 “Party” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 13. “Party” means participants in a matter governed by this article, which may include the following:

- (1) The owner of the subject property.**
- (2) The taxpayer responsible for the property taxes payable on the subject property.**
- (3) The person filing an appeal petition.**
- (4) The township assessor, county assessor, or PTABOA that made the original determination under appeal.**
- (5) A PTABOA that made a determination on an exemption application under appeal.**
- (6) A county auditor or other local official or body who made the original determination concerning a property tax deduction, credit, or refund.**
- (7) The department.**

(Indiana Board of Tax Review; 52 IAC 2-2-13)

52 IAC 2-2-14 “Person” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-1-10; IC 6-1.1-15

Sec. 14. “Person” means:

- (1) an individual;**
- (2) an agency;**

- (3) a political subdivision;
- (4) a partnership;
- (5) a corporation;
- (6) a limited liability corporation;
- (7) an association; or
- (8) other entity designated as a person under IC 6-1.1-1-10.

(Indiana Board of Tax Review; 52 IAC 2-2-14)

52 IAC 2-2-15 “Petition for rehearing” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-5

Sec. 15. “Petition for rehearing” means a written request for rehearing properly filed with the board under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-2-15)*

52 IAC 2-2-16 “Practice before the board” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 16. “Practice before the board” means participation in any matters connected with a proceeding before the board, any of its members, or any contractor or employee designated to act in the capacity of an administrative law judge relating to a client’s rights, privileges, or liabilities under Indiana’s property tax laws or rules. Such presentations include, but are not limited to, the following:

- (1) Preparing and filing necessary documents except personal property returns.**
- (2) Corresponding and communicating with the board on a substantive issue in a pending proceeding.**
- (3) Representing a client at a hearing, on-site inspection, or meeting.**

(Indiana Board of Tax Review; 52 IAC 2-2-16)

52 IAC 2-2-17 “Property tax assessment board of appeals” or “PTABOA” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.1-28-1

Sec. 17. “Property tax assessment board of appeals” or “PTABOA” means the county property tax assessment board of appeals established under IC 6-1.1-28-1. *(Indiana Board of Tax Review; 52 IAC 2-2-17)*

52 IAC 2-2-18 “Tax representative” defined

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 18. “Tax representative” means a person who represents another person at a proceeding before the board under IC 6-1.1-15. The term does not include:

- (1) the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal;**
- (2) a permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) who is the subject of the appeal;**
- (3) representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;**
- (4) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or**
- (5) an attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear pro hac vice.**

(Indiana Board of Tax Review; 52 IAC 2-2-18)

Rule 3. Computation of Time and Service

52 IAC 2-3-1 Determination of designated periods of time and filing dates

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) This section applies to the computation of any period of time prescribed or allowed by this article or by order of the board.

(b) The day of the act, event, or default from which the designated period of time begins is not counted. The last day of the designated period is counted but may not be a:

- (1)** Saturday;
- (2)** Sunday;
- (3)** legal holiday as defined by state statute; or
- (4)** day the office in which the act is to be done is closed during regular business hours.

(c) The postmark date on an appeal petition or petition for rehearing, correctly addressed and sent by United States first class mail, registered mail, or certified mail, will constitute prima facie proof of the date of filing.

(d) The date-received stamp affixed by the proper county official or the board to an appeal petition or a petition for rehearing filed by personal delivery will constitute prima facie proof of the date of filing.

(e) If a paper is served through the United States mail, three (3) days must be added to a period that commences upon service of that paper. (*Indiana Board of Tax Review; 52 IAC 2-3-1*)

52 IAC 2-3-2 Notice of appearance; power of attorney

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) If the petitioner is represented by a tax representative, the tax representative must file a power of attorney with the board.

(b) Other authorized representatives, including attorneys, must file a notice of appearance with the board, stating that the petitioner has authorized the representative to appear on the petitioner's behalf.

(c) The power of attorney or notice of appearance must contain the authorized representative's name, address, and telephone number. (*Indiana Board of Tax Review; 52 IAC 2-3-2*)

52 IAC 2-3-3 Service by the board

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 3. (a) This section applies to the service of:

- (1)** notices required by the board under IC 6-1.1-15-4 and IC 6-1.1-15-5; and
- (2)** any other ruling, order, determination, or paper issued by the board.

(b) The board will keep a record of all notices, rulings, determinations, or other papers, served by personal delivery or United States mail, indicating the date and circumstances of the service. The record will constitute prima facie proof of the date and circumstances of service.

(c) Except as otherwise provided by law, the board may serve papers by facsimile.

(d) Service shall be given to each party unless the party has properly designated an authorized representative and that representative has filed a power of attorney or notice of appearance as required under section 2 of this rule, in which case service shall be given to the party's authorized representative.

(e) Service to a person that is not an individual must be made to the party's authorized representative in accordance with:

- (1) the power of attorney attached to the appeal petition;
- (2) any superseding power of attorney filed with the board; or
- (3) any notice of appearance filed by an attorney or other authorized representative.

(f) The taxpayer, or the taxpayer's authorized representative, must provide written notification to the board of any change of address or facsimile number. Unless this written notification is provided, service will be deemed accomplished when mailed or faxed according to the last known address or facsimile number properly provided to the board. (*Indiana Board of Tax Review; 52 IAC 2-3-3*)

52 IAC 2-3-4 Service by a party

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) Unless otherwise specified by an administrative law judge or the board, all documents and other papers that are filed with or submitted to the administrative law judge or board regarding a matter governed by this article must also be served upon all parties or, if the party has a properly authorized representative, upon the authorized representative.

(b) Service of papers other than appeal petitions and petitions for rehearing may be made by electronic mail or facsimile. (*Indiana Board of Tax Review; 52 IAC 2-3-4*)

Rule 4. Filing Appeal Petitions and Petitions for Rehearing

52 IAC 2-4-1 Filing of appeal petitions; petitions for rehearing

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) The filing of appeal petitions and petitions for rehearing must be made by:

- (1) personal delivery;
- (2) deposit in the United States mail; or
- (3) registered or certified mail, return receipt requested.

(b) Appeal petitions and petitions for rehearing may not be filed by facsimile or electronic mail. (*Indiana Board of Tax Review; 52 IAC 2-4-1*)

52 IAC 2-4-2 Time and place for filing appeal petitions

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-11-7; IC 6-1.1-15-3; IC 6-1.1-15-12

Sec. 2. (a) A petition for review of assessment (on Form 131 or other form designated by the board) under IC 6-1.1-15-3 must be filed with the county assessor within thirty (30) days after the notice of the determination by the PTABOA.

(b) A petition to correct errors (on Form 133 or other form designated by the board) under IC 6-1.1-15-12 must be filed with the county auditor within thirty (30) days after notice of the determination of the PTABOA.

(c) A petition for review of exemption (on Form 132 or other form designated by the board) under IC 6-1.1-11-7 must be filed with the county assessor within thirty (30) days after notice of the determination of the PTABOA.

(d) A petition for review of an action by the department must be filed with the board within forty-five (45) days after notice of the determination of the department unless otherwise specified by statute.

(e) There is a rebuttable presumption that the notice of determination is mailed on the date of the notice.
(Indiana Board of Tax Review; 52 IAC 2-4-2)

52 IAC 2-4-3 Time and place for filing petitions for rehearing

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 3. Persons filing a petition for rehearing under IC 6-1.1-15-5 must file the petition with the board within fifteen (15) days after the board gives notice of its final determination under IC 6-1.1-15-4. (Indiana Board of Tax Review; 52 IAC 2-4-3)

Rule 5. Compliant Appeal Petitions and Scope of Review

52 IAC 2-5-1 Compliant appeal petition

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) Appeal petitions must be submitted on the form prescribed by the board and in conformance with the instructions provided on the petition.

(b) A separate petition must be filed for each parcel.

(c) The petition shall include the following:

(1) Legal and factual basis of the appeal.

(2) Assessment of the subject property that the petitioner alleges is correct.

(3) Assessed value placed on the subject property in the original determination or, if different, the assessed value placed on the property by the PTABOA.

(4) All information requested on the petition form.

(5) Any other information requested by the board.

(d) If the appeal petition is not properly completed, the board will issue a notice of defect specifying the nature of the defect and shall return the appeal petition to the petitioner. The petitioner must correct or cure the appeal petition within thirty (30) days from the date the notice of defect is served.

(e) Failure to adequately correct the specified defect will result in denial of the petition without hearing.
(Indiana Board of Tax Review; 52 IAC 2-5-1)

52 IAC 2-5-2 Amendments to appeal petitions; additional written specification

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) Timely filed amendments to appeal petitions are permitted.

(b) The petition may be amended once as a matter of course within thirty (30) days of the filing of the original appeal petition.

(c) Amendments filed later than thirty (30) days following the filing of the petition must be approved by the board for good cause shown. Amendments filed solely for the purpose of adding new issues will be approved if filed fifteen (15) days prior to the hearing.

(d) Notwithstanding subsection (b), the board will not approve an amendment filed within fifteen (15) days prior to the hearing without the consent of the other parties to the hearing.

(e) Amendments to appeal petitions must be filed at the central office and must be served upon all parties.

(f) The rules regarding the filing of appeal petitions also apply to amendments to appeal petitions.

(g) Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing. (*Indiana Board of Tax Review; 52 IAC 2-5-2*)

52 IAC 2-5-3 Limitations of issues

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) The board may not limit the scope of the issues raised in the appeal petition to those presented to the county property tax assessment board unless all parties agree to the limitation of issues.

(b) If new issues are raised in an amendment to the appeals petition, the amendment is subject to the terms of section 2 of this rule.

(c) If an issue not presented to the PTABOA is raised in the appeal petition or the amended appeal petition, the board may remand the petition to the PTABOA for consideration of the new issue if consented to by the parties and the PTABOA.

(d) If the board remands the petition to the PTABOA under subsection (c) and the PTABOA does not issue a determination on the new issue within sixty (60) days of the remand, the board shall proceed to hear the appeal. (*Indiana Board of Tax Review; 52 IAC 2-5-3*)

Rule 6. Hearing Procedures

52 IAC 2-6-1 Hearing date

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-4-4; IC 6-1.1-15

Sec. 1. (a) Except as provided in subsection (b), the board shall conduct a hearing within nine (9) months after a petition in proper form is filed with the board, excluding any time due to a delay reasonably caused by any of the parties or any extension of time agreed to by the parties.

(b) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the board shall conduct a hearing within one (1) year after a petition in proper form is filed with the board, excluding any time due to a delay reasonably caused by any of the parties or any extension of time agreed to by the parties. (*Indiana Board of Tax Review; 52 IAC 2-6-1*)

52 IAC 2-6-2 Place of hearing

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) Hearings held before an administrative law judge or by a member of the board acting as an administrative law judge shall be held in the county in which the property subject to the appeal is located, in an adjacent county, or at such other location as the parties and the designated administrative law judge agree.

(b) All hearings conducted by a member of the board or by the board sitting in its entirety will be held in the central office unless otherwise agreed to by the board. (*Indiana Board of Tax Review; 52 IAC 2-6-2*)

52 IAC 2-6-3 Expedited hearing procedures

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) A petitioner may submit evidence by affidavit, duly sworn, in lieu of the petitioner's or other witness's appearance at the hearing.

(b) The board may issue a determination based upon a record created by stipulation of the parties as to some or all of the issues on appeal.

(c) A hearing or prehearing conference may be conducted by telephone or through video conferencing upon agreement of the parties. *(Indiana Board of Tax Review; 52 IAC 2-6-3)*

52 IAC 2-6-4 Issuance of final determination

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-4-4; IC 6-1.1-15-5

Sec. 4. (a) Except as provided in subsections (b) and (c), the board shall make a final determination within ninety (90) days after the date the hearing is held.

(b) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the board shall make a determination within one hundred eighty (180) days after the hearing.

(c) The board may, on its own motion and upon written notification, extend the final determination date under subsection (a) or (b) by up to one hundred eighty (180) days. The board shall be presumed to have extended the final determination date to the maximum time allowed unless otherwise specified by the board in writing.

(d) If the board does not issue a final determination within the maximum time allowed by this section, the petitioner may:

- (1)** take no action and wait for the board to issue a final determination; or
- (2)** treat the petition as having been deemed denied and petition for judicial review under IC 6-1.1-15-5.

(e) Upon notice to the parties of the denial, or if the petitioner elects to treat the matter as deemed denied under subsection (d)(2), the petitioner may seek judicial review under IC 6-1.1-15-5.

(f) A final determination requires the approval by a majority of the board. If a majority of the board is not able to arrive at a final determination, the petition shall be deemed denied and the parties will be so notified. *(Indiana Board of Tax Review; 52 IAC 2-6-4)*

52 IAC 2-6-5 Hearing formality; transcription services

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) Hearings will be conducted by an administrative law judge, any member of the board, or the board sitting in its entirety.

(b) Hearings shall be informal proceedings.

(c) All testimony shall be under oath or affirmation.

(d) Hearings will be tape recorded by the administrative law judge. The recording of the administrative law judge will serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. A party may hire a court reporting service to transcribe the hearing so long as the reporting service is directed to submit an official copy of the transcript to the board at no cost to the board.

(e) The administrative law judge may rule on any nonfinal order without the approval of a majority of the board. *(Indiana Board of Tax Review; 52 IAC 2-6-5)*

52 IAC 2-6-6 Evidentiary burden

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (a) The petitioner must establish a prima facie case with probative evidence sufficient to establish both an error in the assessment or original determination and to establish the correct assessment or proper determination.

(b) The respondent must rebut any established prima facie case with sufficient probative evidence to outweigh the petitioner's contentions by a preponderance of all probative evidence presented.

(c) Except as provided in 52 IAC 2-7-4, the board shall consider only the evidence, exhibits, and briefs submitted to it, other documents made part of the record, and matters of which the board expressly takes judicial notice. (*Indiana Board of Tax Review; 52 IAC 2-6-6*)

52 IAC 2-6-7 County assessor as an additional party

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. (a) The county assessor in the county where the property is located may:

- (1)** appear as an additional party in a proceeding before the board; or
- (2)** file an objection to a settlement or stipulation of assessed value or exempt status.

(b) In order to appear as an additional party or to object to settlement or stipulation of value or exempt status, the county assessor must do the following:

- (1)** Notify the parties and the board in writing.
- (2)** Include a detailed statement of the reason for the appearance or objection.
- (3)** File the notice of their appearance as a party within thirty (30) days of the petition filing or within ten (10) days of receipt of notice of the proposed settlement or stipulation.

(c) If a county assessor does not appear as an additional party in a case, but files an objection to a settlement or stipulation of assessed value or exempt status, the parties in the case may submit a written response to the objection within ten (10) days. The board may either accept or reject the objection or may accept the objection in part and reject it in part. (*Indiana Board of Tax Review; 52 IAC 2-6-7*)

52 IAC 2-6-8 Consolidation order

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 8. (a) The board may, on its own motion or upon motion by one (1) or more parties, consolidate two (2) or more petitions for the appeal of an assessment of real property if:

- (1)** the properties are located in the same township and are of the same classification; and
- (2)** the common factual and legal issues in dispute predominate over the individual issues.

(b) The board shall notify the parties of its intent to consolidate the actions and shall permit a petitioner, as a matter of right, to sever itself from the consolidated action.

(c) A motion to sever under subsection (b) must be in writing. (*Indiana Board of Tax Review; 52 IAC 2-6-8*)

52 IAC 2-6-9 Summary judgment; partial summary judgment

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 9. The board may, on its own motion or upon motion of a party, set a matter for a hearing on summary

judgment or partial summary judgment. Unless otherwise specified in these rules, the hearing shall be conducted in substantial compliance with Rule 56 of the Indiana Rules of Trial Procedure. (*Indiana Board of Tax Review; 52 IAC 2-6-9*)

Rule 7. Evidentiary Procedures

52 IAC 2-7-1 Evidence not previously presented

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) Except as provided in subsection (b), a person participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.

(b) A party to the appeal must provide to the other parties:

(1) copies of documentary evidence or summaries of statements of testimonial evidence at least five (5) days prior to the hearing; and

(2) a list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) days prior to the hearing. If a new issue has been added by another party under 52 IAC 2-5-2(c), a party may supplement its list of witnesses and exhibits ten (10) days prior to the hearing in order to address the new issue.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal or hand delivery or deposit the materials in the U.S. mail or other courier service three (3) days prior to the deadline in accordance with provisions of 52 IAC 2-3-1. If a party uses a courier service that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

(d) The board or the presiding administrative law judge may waive the deadlines under subsection (b) for any materials that had been submitted at or made part of the record at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.

(e) Copies of all materials provided to other parties under subsection (b) must be provided to the board or the presiding administrative law judge at the commencement of the hearing. Such materials will become part of the administrative record only if admitted into evidence by the board or administrative law judge.

(f) Failure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue.

(g) Materials submitted to or made a part of the record at a PTABOA hearing, department hearing, or other proceeding from which the appeal arises proceeding will not be made part of the record of the board proceeding unless submitted to the board and, with respect to evidentiary materials, admitted into evidence by the board. (*Indiana Board of Tax Review; 52 IAC 2-7-1*)

52 IAC 2-7-2 Admissibility; relevancy; weight

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) A party may object to the admissibility of evidence during the hearing. The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the rules of evidence. The administrative law judge may defer a ruling on the admissibility of the evidence for the board's decision. If the administrative law judge defers a ruling, all proffered evidence will be entered for the record and its admissibility will be considered by the board and addressed in the findings.

(b) The board will determine the relevance and weight to be assigned to the evidence. Although evidence may be admitted over the objection of a party, if it is immaterial, irrelevant, or should be excluded or disregarded on other grounds, it will not be assigned any weight in the board's final determination. (*Indiana Board of Tax*

Review; 52 IAC 2-7-2)

52 IAC 2-7-3 Hearsay evidence

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence. *(Indiana Board of Tax Review; 52 IAC 2-7-3)*

52 IAC 2-7-4 Commonly recognized sources

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) The board may consult and rely on publications, treatises, or other documents relevant to the issues presented at the hearings and that are commonly considered to be reliable authorities on the subjects addressed in reaching its final determination.

(b) The board's findings will include specific reference to any publication, treatise, or other documents relied on under subsection (a). *(Indiana Board of Tax Review; 52 IAC 2-7-4)*

52 IAC 2-7-5 Confidential information

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 5-14-3-1; IC 6-1.1-15; IC 6-1.1-35-9

Sec. 5. (a) A party must, at the time it is submitted, clearly identify all confidential information provided to the board and specify the statutory basis under which the information is claimed to be confidential.

(b) The board shall make a finding on the confidentiality of information upon the motion of the party and submission of such information.

(c) Information deemed confidential by the board shall be so identified by the board and shall be disclosed only in a manner consistent with IC 6-1.1-35-9, IC 5-14-3-1, et seq., and other applicable law.

(d) A redacted version of a document containing both confidential and nonconfidential evidence shall be provided to the board by the party requesting confidential treatment. The redacted version of the document will be available to the public under IC 5-14-3. *(Indiana Board of Tax Review; 52 IAC 2-7-5)*

Rule 8. Prehearing and Posthearing Activities

52 IAC 2-8-1 Continuance of proceedings

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) Continuances and extensions of time may be granted only if:

- (1)** timely made;
- (2)** good cause is shown; and
- (3)** the request was served on all parties.

(b) A continuance or extension granted prior to the hearing shall be considered a delay reasonably caused by the party requesting the continuance or extension and shall automatically extend the time during which the hearing must be held. *(Indiana Board of Tax Review; 52 IAC 2-8-1)*

52 IAC 2-8-2 Prehearing conference

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) The board may, upon reasonable notice to the parties, order a prehearing conference. A prehearing conference order may include a requirement for the parties to confer and submit an appeals management plan addressing matters outlined in subsection (b).

(b) The board may, through the prehearing conference or appeals management plan, require the parties to submit:

- (1)** a list of two (2) or more desired dates for the hearing;
- (2)** a preliminary statement of all contentions and defenses;
- (3)** a discovery and motion schedule;
- (4)** a preliminary witness and exhibit list;
- (5)** possible stipulations;
- (6)** amendments to the appeal petition;
- (7)** an outline or summary of the matter under appeal; or
- (8)** any other information that the board deems beneficial to the orderly review of an appeal petition.

(c) The parties, subject to an order issued under subsection (a), must demonstrate a good faith effort to comply with the order and reach agreement on an appeals management plan and the matters specified in the order. If the parties fail to materially comply with the order, or do not demonstrate a good faith effort, the board or the designated administrative law judge may:

- (1)** conduct the prehearing conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the prehearing conference; or
- (2)** issue an order addressing any matter not adequately resolved.

(Indiana Board of Tax Review; 52 IAC 2-8-2)

52 IAC 2-8-3 Discovery

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) A party may use the applicable discovery methods contained in the Indiana Rules of Trial Procedure to the extent they are not inconsistent with other board rules, controlling statutes, or the efficient operation of the administrative proceeding. The board will look to the Indiana Rules of Trial Procedure for general guidance on discovery procedures but may, at its discretion, apply different procedures as it deems appropriate to administer the proceeding effectively.

(b) The parties shall make all reasonable efforts to resolve discovery disputes before seeking a discovery order from the board.

(c) Upon showing of good cause, including a description of independent efforts made to resolve the discovery dispute, the board may issue a discovery order consistent with subsection (a). If necessary, the enforcement of such order or right of discovery shall be in accordance with the Indiana Rules of Trial Procedure.

(d) A party seeking a discovery order under this section shall notify all parties.

(e) A party may seek discovery of witnesses, exhibits, or other evidence that the other party intends to present at the hearing. However, a party may not be precluded from supplementing the evidence and witness summaries required by 52 IAC 2-7-1(b)(1) or adding to the witness and exhibit lists required by 52 IAC 2-7-1(b)(2) because such items were not identified in discovery.

(f) Failure to respond to requests for admission in accordance with the Indiana Rules of Trial Procedure will not result in automatic admission. However, a party seeking discovery may request an order from the board that

requests for admissions which have not been responded to by a party in accordance with the Indiana Rules of Trial Procedure will be deemed admitted unless the party responds to such requests for admission within fifteen (15) days of the board's order or within such other period of time as the board shall specify in its order.

(g) No party shall serve on any other party more than twenty-five (25) interrogatories or more than twenty-five (25) requests for admissions, including subparagraphs and subparts, without leave of the board.

(h) Upon motion of a party and for good cause shown, the board may issue a protective order restricting discovery of a trade secret or other confidential information or other matter consistent with the Indiana Rules of Trial Procedure and these rules.

(i) Depositions may be taken in accordance with the Indiana Rules of Trial Procedure.

(j) Any member of the board or the administrative law judge assigned to hear the petition may issue a nonfinal order with respect to a discovery motion, motion to compel, motion for protective order, or other motion related to discovery or procedure. (*Indiana Board of Tax Review; 52 IAC 2-8-3*)

52 IAC 2-8-4 Subpoena

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) Any party may request that the board issue a subpoena or subpoena duces tecum by filing a request with the board at least ten (10) business days before the date on which the hearing commences or the deposition is scheduled. The request shall state the following information:

- (1) The name of the witness.
- (2) The address, including street address, city, and county, where the witness can be served.
- (3) The date, time, and location the witness is expected to appear.
- (4) The matter in which the witness is expected to testify.
- (5) If a subpoena duces tecum, the material, listed in detail, to be brought by the witness to the hearing or deposition.

(b) A request for a subpoena or subpoena duces tecum shall not be granted by the board if filed fewer than ten (10) business days before the date on which the hearing commences or the deposition is scheduled except by approval of the board upon a showing of good cause.

(c) Except as provided in subsection (b), upon receipt of a properly filed request, the appropriate subpoena shall be issued by any member of the board.

(d) Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas may be served in any manner specified by the rules governing the trial of civil causes. Subpoenas shall be enforced in a court of competent jurisdiction as provided for by law. (*Indiana Board of Tax Review; 52 IAC 2-8-4*)

52 IAC 2-8-5 Motions

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) A party may file motions with the board or the designated administrative law judge. Except motions made during the hearing, all motions must:

- (1) be in writing;
- (2) state the basis for the motion;
- (3) set forth the relief or order sought;
- (4) be properly captioned with the petition number, parcel number, and taxpayer's name, address, and telephone number;
- (5) be signed by the party or authorized representative; and

(6) include verification or proof of service to all parties.

(b) The failure to serve all parties may result in a denial of the motion.

(c) Any response to a motion must be filed within ten (10) days after the date of service unless otherwise specified by the board or the administrative law judge. (*Indiana Board of Tax Review; 52 IAC 2-8-5*)

52 IAC 2-8-6 Briefs

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (a) Parties may file, or the board may request, briefs in support of a party's position on any issue relevant to the appeal.

(b) Briefs shall be filed within the time limits set by the administrative law judge or board. An extension of time may be requested. If a party fails to timely file a brief, the board may exclude the brief from consideration.

(c) An original and two (2) copies of a brief submitted under this section must be filed with the board at the central office. A copy of the brief shall also be served on each party.

(d) A brief submitted under this section must not exceed thirty (30) pages (excluding exhibits) without prior written permission of the board or administrative law judge.

(e) Notwithstanding a submission deadline, a party may supplement a previously filed brief with subsequently decided cases, but without further argument.

(f) Briefs amicus curiae may be filed with leave of the board and must be filed in accordance with the briefing schedule established for the parties or by order of the board or the designated administrative law judge. (*Indiana Board of Tax Review; 52 IAC 2-8-6*)

52 IAC 2-8-7 Submission of proposed findings and conclusions

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. (a) Parties may file proposed findings of fact and conclusions of law with the board.

(b) Proposed findings and conclusions must be filed within the time period established and at the address designated by the board or administrative law judge and a copy served on each party. (*Indiana Board of Tax Review; 52 IAC 2-8-7*)

52 IAC 2-8-8 Posthearing evidence

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 8. (a) No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board. The administrative law judge will set a deadline for the submission of any requested evidence and specify the address to which the posthearing evidence must be submitted.

(b) An extension of time to submit posthearing evidence may be requested if submitted in writing to the administrative law judge. An extension may be granted if timely made and good cause is shown. If posthearing evidence is untimely submitted, the board will proceed to determine the appeal petition without considering the untimely submitted posthearing evidence.

(c) Posthearing evidence submitted must be served on all parties. (*Indiana Board of Tax Review; 52 IAC 2-8-8*)

Rule 9. Orders and Determinations

52 IAC 2-9-1 Orders and determinations

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. All parties will be notified of all orders or determinations issued by the board. (*Indiana Board of Tax Review; 52 IAC 2-9-1*)

52 IAC 2-9-2 Final order

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-5

Sec. 2. (a) Final orders and final determinations shall:

- (1) contain the name of the petitioner and identify the property that is the subject of the appeal;
- (2) identify the parties and representatives participating in the proceeding;
- (3) a concise statement of the basic facts of record;
- (4) contain separately stated findings of fact;
- (5) contain a decision disposing of all contested issues; and
- (6) include a notice of appeal rights.

(b) Findings must be based exclusively on the evidence in the record and on matters officially noticed in the proceeding.

(c) A final order is subject to judicial review under IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 2-9-2*)

52 IAC 2-9-3 Corrected or amended final order

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) The board may issue a corrected final order to correct an oversight, error, or omission in the original final determination within the earlier of:

- (1) forty-five (45) days of issuing the final order; or
- (2) the date a verified petition for judicial review of the final determination is filed with the Indiana tax court.

(b) A corrected or amended final order shall be treated as the final order or determination on the appeal petition, and the parties shall have forty-five (45) days from the date the amended or corrected final order is issued to seek judicial review. (*Indiana Board of Tax Review; 52 IAC 2-9-3*)

52 IAC 2-9-4 Settlement; stipulation of value

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) All stipulations submitted by the parties concerning the value or status of the property must be approved by the board.

(b) If the stipulation concerns property original assessed by or under the authority of a township assessor, the petitioner must notify the county assessor in the county in which the property is located of the proposed stipulation at the time the stipulation is filed with the board.

(c) If the county assessor wishes the board to consider the county assessor's objections to the stipulation, the county assessor must file a written objection to the stipulation within ten (10) days of the date the stipulation is filed with the board.

(d) If the board does not approve a stipulation, the appeal shall proceed to hearing or such posthearing procedure as appropriate and authorized by statute and rules. (*Indiana Board of Tax Review; 52 IAC 2-9-4*)

Rule 10. Sanctions

52 IAC 2-10-1 Failure to appear

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) The failure to appear at a hearing, after proper notice has been given, may constitute the basis for a default or dismissal of the appeal petition.

(b) Within ten (10) days after the order of default or dismissal is issued, the party against whom the order is entered may file a written objection requesting that the order be vacated and set aside. This objection must contain supportive facts stating why the party did not appear.

(c) The board may vacate and set aside an entry of a dismissal or default order.

(d) If an order of default or dismissal is vacated and set aside, the board will schedule another hearing on the appeal petition. At least ten (10) days' notice will be given for the hearing unless waived by agreement of all parties. The time period within which the board must issue a final determination on the appeal petition will be calculated from the date of the hearing on the merits. (*Indiana Board of Tax Review; 52 IAC 2-10-1*)

52 IAC 2-10-2 Default or dismissal

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-5

Sec. 2. (a) The board may issue an order of default or dismissal as the result of:

- (1)** failure of the petitioner to state a claim on which relief can be granted;
- (2)** failure of a party to comply with a rule or order of the board or administrative law judge;
- (3)** disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative; or
- (4)** failure of a party to provide or exchange evidence in accordance with this article.

(b) The board may issue an order of default or dismissal on motion of a party or on its own motion.

(c) A dismissal or default under this section is a final determination and may be appealed to tax court in accordance with the provisions of IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 2-10-2*)

52 IAC 2-10-3 Ex parte communications prohibited

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) Parties, their authorized representatives, or anyone acting on their behalf are prohibited from engaging in ex parte communications with the administrative law judge or the board regarding any substantive matters relating to the appeal petition while the administrative appeals process is ongoing.

(b) Ex parte communications may be grounds for dismissal of the appeal.

(c) Communications:

- (1)** regarding matters of practice and procedure;
- (2)** that do not pertain to the merits of the appeal; or
- (3)** to which the opposing party or parties have given consent;

are not considered ex parte communications under this section. (*Indiana Board of Tax Review; 52 IAC 2-10-3*)

Rule 11. Mediation and Dispute Resolution

52 IAC 2-11-1 Mediation and alternative dispute resolution

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. Any appeal to the board may, with the consent of the parties, be resolved by mediation or other alternate dispute resolution procedures. *(Indiana Board of Tax Review; 52 IAC 2-11-1)*

52 IAC 2-11-2 Arbitration

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) An appeal may, with the consent of the parties, be resolved by arbitration. Requests for diversion of an appeal to arbitration may be made by any party, or the board may recommend that the matter be arbitrated.

(b) If ordered by the board, the arbitration may be conducted by a licensed real estate appraiser who shall do the following:

- (1)** Inspect the subject property.
- (2)** Prepare a report that includes the arbitrator's recommendation on the value of the property.
- (3)** Submit the report to the parties and the board.

(c) The board shall accept, reject, or modify the arbitrator's recommendation. If the board accepts the arbitrator's decision, the parties shall be bound by the determination. If the board rejects or modifies the arbitrator's decision, the matter will be set for a hearing in accordance with IC 6-1.1-15.

(d) The costs of arbitration may be paid by the board if the arbitrator is selected by the parties from a panel of arbitrators approved by the board in accord with the process described in subsection (e).

(e) The selection process shall be conducted as follows:

- (1)** The board shall present the parties with a panel of three (3) arbitrators.
- (2)** The respondent, or co-respondents acting jointly, shall strike one (1) name from the panel.
- (3)** The petitioner, or co-petitioners acting jointly, shall strike one (1) name from the panel.
- (4)** The remaining arbitrator shall conduct the arbitration.

(Indiana Board of Tax Review; 52 IAC 2-11-2)

Rule 12. Miscellaneous Provisions

52 IAC 2-12-1 Supersedes conflicting rules

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. The provisions of this article shall supersede 50 IAC 17. *(Indiana Board of Tax Review; 52 IAC 2-12-1)*

SECTION 2. 52 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. SMALL CLAIMS PROCEDURES

Rule 1. Small Claims Procedures

52 IAC 3-1-1 Applicability

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. This article governs the practice and procedure in all matters of small claims procedure. The provisions of 52 IAC 2 apply to the small claims procedures unless inconsistent with the provisions of this article or the general object and purpose of this article to make the administration of small claims more efficient, informal, simple, and expeditious than those administered under 52 IAC 2. *(Indiana Board of Tax Review; 52 IAC 3-1-1)*

52 IAC 3-1-2 Property subject to the small claims procedure

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) Unless a party elects to transfer out under section 3 of this rule, a petition shall be subject to the small claims procedure if the property under appeal is:

- (1) an unimproved parcel of land with an assessed value not in excess of one million dollars (\$1,000,000);
- (2) a parcel of land, as improved, with an assessed value for land and improvements not in excess of one million dollars (\$1,000,000); or
- (3) personal property not in excess of one million dollars (\$1,000,000).

(b) By accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the board.

(c) The small claims appeal petition may not be amended except to conform the issues raised in the appeal petition to those issued raised at the PTABOA hearing from which the appeal arises.

(d) A party to any appeal concerning a property that does not meet the criteria described in subsection (a) may elect to have the petition heard pursuant to the small claims procedure by:

- (1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and
- (2) obtaining the written consent to such election from the other parties to the proceeding.

(Indiana Board of Tax Review; 52 IAC 3-1-2)

52 IAC 3-1-3 Transfer

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) A party who does not wish his or her matter to be heard pursuant to the small claims procedure may request a transfer for the proceeding from the small claims procedure to the standard hearing procedure governed by 52 IAC 2.

(b) The request for transfer shall be made by:

- (1) opting out of the small claims procedure on the appeal petition; or
- (2) written notice to the board no later than fifteen (15) days prior to the date of the small claims hearing.

(c) The time for hearing the matter pursuant to the standard board procedure described under 52 IAC 2 shall begin to run from the date the request for transfer is received by the board. *(Indiana Board of Tax Review; 52 IAC 3-1-3)*

52 IAC 3-1-4 Representation

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) A party may appear on his or her own behalf, by any representative expressly authorized by the party, in writing, to appear on the party's behalf, or by an attorney who has complied with the notice of appearance requirements of 52 IAC 2-3-2.

(b) The rules concerning tax representatives under 52 IAC 1 apply to the small claim procedure. (*Indiana Board of Tax Review; 52 IAC 3-1-4*)

52 IAC 3-1-5 Informality of proceeding

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) The small claims procedures shall be informal with the sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law. Small claims procedures are not bound by the rules of trial practice, procedure, or evidence except provisions relating to privileged communications and offers of settlement. This relaxation of evidentiary rules is not a relaxation of the burden of proof.

(b) Hearsay evidence may be considered if not objected to, but the determination may not be based solely upon the hearsay evidence.

(c) Except as provided in subsection (f), there shall be no prehearing discovery in the small claims.

(d) No prehearing conferences will be held in small claims.

(e) No posthearing submissions will be allowed or accepted in small claims.

(f) The parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.

(g) At the commencement of the small claims hearing, the parties shall make available to the presiding administrative law judge a copy of all documentary evidence provided to the other parties.

(h) Failure to comply with subsection (f) may serve as grounds to exclude evidence or testimony that has not been timely provided. (*Indiana Board of Tax Review; 52 IAC 3-1-5*)

52 IAC 3-1-6 Waiver of hearing

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. The parties in small claims may elect to waive a hearing and have the board issue a final determination based solely on the written and documentary evidence submitted by the parties. (*Indiana Board of Tax Review; 52 IAC 3-1-6*)

52 IAC 3-1-7 Continuance of the hearing

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. A small claims proceeding shall be continued only upon a showing of extraordinary circumstances. (*Indiana Board of Tax Review; 52 IAC 3-1-7*)

52 IAC 3-1-8 Hearing presentation time restrictions

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 8. (a) Each party will be restricted in the amount of time they will be allowed to present their case in a small claims proceeding to no more than twenty (20) minutes.

(b) Parties that elect the small claims procedure, but have a substantial amount of written and documentary

evidence or numerous witnesses, must be prepared to present their case within the time restrictions. It is the responsibility of the parties to organize their presentation such that the oral presentation references the supporting written and documentary evidence sufficient for the administrative law judge and the board to make the desired connections between the oral testimony and any more detailed supporting evidence. Exhibit lists, evidentiary outlines, affidavits, summaries, and other such tools should be utilized if necessary for the party to present their case within the time restrictions.

(c) If a party cannot adequately present its case within the time restrictions, it is the duty of that party to request in writing that the matter be removed from the small claims docket and scheduled to be heard under 52 IAC 2. Petitions cannot be withdrawn from small claims once the hearing has commenced except under extraordinary circumstances. (*Indiana Board of Tax Review; 52 IAC 3-1-8*)

52 IAC 3-1-9 Record of proceedings

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 9. Small claims hearings shall be recorded with a recording device. (*Indiana Board of Tax Review; 52 IAC 3-1-9*)

52 IAC 3-1-10 Decision and judicial review

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15-5

Sec. 10. (a) A decision rendered through the small claims process shall be in writing.

(b) A decision rendered through the small claims process shall be reviewed by the board.

(c) The board shall accept, reject, or modify the decision and issue a final determination.

(d) The final determination is subject to judicial review under IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 3-1-10*)

52 IAC 3-1-11 Supersedes conflicting rules

Authority: IC 4-22-5-1; IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 11. The provisions of this article shall supersede any rule or instructional bulletin promulgated or issued prior to the effective date of this article to the extent that the rule or instructional bulletin is in conflict with the provisions of this article. (*Indiana Board of Tax Review; 52 IAC 3-1-11*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 29, 2003 at 10:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N1058, Indianapolis, Indiana the Indiana Board of Tax Review will hold a public hearing on proposed rules to govern the processing of petitions, and practice and procedures, for proceedings before the Indiana Board of Tax Review. Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation that may serve to support, clarify, or supplement their concerns, suggestions, or proposed revisions. The Indiana Board of Tax Review also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Michael Dart, Senior Administrative Law Judge, Indiana Board of Tax Review, at (317) 233-6767. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Annette Biesecker
Chairman
Indiana Board of Tax Review